

Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

Amendments to the Drawings

The attached sheet of drawings includes replacement sheets with changes to Figures 1 and 2. In addition, annotated drawing sheets showing changes are also attached.

Attachments:

Replacement drawing sheets for Figures 1 and 2

Annotated drawing sheets showing changes for Figures 1 and 2

Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

REMARKS

Claims 1-30 remain in the application. Claims 1, 16, and 23 have been amended. The drawing sheets have been amended. The specification has been amended to correct some minor issues. The title has been changed, as requested in the Office Action.

Please note that the correspondence address on file is incorrect. Brown, Raysman, Millstein, Felder & Steiner, LLP are not the attorneys of record for this applicant, as incorrectly listed in the Office Action and the published application number US2005/0066322 A1; nor are Steptoe & Johnson, as listed in the Patent Application Information Retrieval (PAIR) website. Applicant respectfully requests a correction and has attached Form PTO/SB 122, Change of Correspondence Address.

Applicant requests a reversal of the claim rejections based on the amendments and the following remarks.

DRAWINGS

The Office Action objected to the drawings for problems with labeling. These problems have been corrected on Figures 1 and 2. Replacement drawing sheets are attached.

SPECIFICATION

The Office Action objected to the title of the disclosure. Applicant has amended the title, as suggested by the Examiner. The Office Action also objected to a redundancy in the

Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

first paragraph of page 2 of the specification. This is not a redundancy, but a mistake on the part of the Patent Office to correctly insert a paragraph on page 2, as specified in Applicant's Preliminary Amendment filed on September 18, 2003. Rather than inserting the paragraph as provided by Applicant, the Patent Office inserted only the last word of the second to the last sentence ("program") and the last sentence. Applicant has again provided the full text of the paragraph to insert.

CLAIM REJECTIONS UNDER 35 USC §112

The Office Action rejected claims 5, 13, 22, and 26 under 35 USC 112, first paragraph, for failing to comply with the written description requirement. Section 112 requires that the specification shall contain a "written description" of the invention. The purpose of the "written description" requirement is to determine whether the inventor possessed the claimed invention at the time the application was filed. *In re Wilder*, 736 F.2d 1516 (Fed. Cir. 1984), cert. denied 469 U.S. 1209, *In re Kaslow*, 707 F.2d 1366 (Fed. Cir. 1983). It is axiomatic that the claims define the limits of patent protection. *Charles Greiner & Co. v. Mari-Med Mfg., Inc.*, 962 F.2d 1031, 1036 (Fed. Cir. 1992). Claims 1-30 were part of the originally filed specification. Therefore, it is beyond reasonable dispute that Applicant had possession of the invention of claims 1-30.

The Office Action rejected claims 9, 10, 11, 12, and 30 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. A patent specification is not required to be a production specification. *In re Gay*, 309 F.2d 769, USPQ 311 (CCPA

Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

1962). Moreover, “[a] patent need not discuss what is well known in the art. *In re Wands*, 858 F.2d 731, 8 USPQ2d 1400 (Fed. Cir. 1988); *Spectra-Physics, Inc. v. Coherent*, 827 F.2d 1524, 3 USPQ2d 1737 (Fed. Cir. 1987) *cert. denied* 484 U.S. 954 (1987).

Claims 9, 10, 11, 12 are method claims. Claim 30 is an article of manufacture counterpart to method claim 9. Each of them recites a step that is self-explanatory and supported by the disclosure. For example, thread switching of claims 9 and 30 was a known technique as of the time of filing of the present application. See US Patent No. 7,155,600, col. 1, lines 43-44. With respect to claim 11, presenting a visualization was a known technique as of the time of filing of the present application. See US Patent No. 7,027,051, col. 12, lines 31-33. Scheduling checkpoint operations was another technique known as of the time of filing. See US Patent No. 6,993,458, col. 1, line 60 and US Patent No. 6,666,304, col. 30, lines 19-21. With respect to claim 12, resetting profile data was discussed in US Patent No. 6,029,004. The Office Action has not shown why one having ordinary skill in the programming arts given the disclosure would not be able to use the claimed methods.

The specification includes two flow charts and a block diagram of a computer machine and discussion of these figures. An application of the claimed subject matter is garbage collection which is used in programming languages such as JAVA, a very popular and well known programming system.

The Office Action rejected claims 1 – 30 under 35 USC 112, first paragraph, for failing to comply with the written description requirement. The basis for this rejection appears to be that no description is allegedly given for the term “activation,” and “activation

Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

counter." As noted above, claims 1-30 were all part of the original specification which includes the claims (see 35 USC 112, paragraph 2: "The specification shall conclude with one or more claims."). If the Examiner is concerned about the meaning of "activation counter," reference is made to US Patent No. 6,049,767, col. 5, line 39.

The Office Action rejected claims 1-22 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Independent claims 1 and 16 have been amended to clarify that the method and system claimed perform an association of a phase with an activation.

CLAIM REJECTIONS UNDER 35 USC §102

The Office Action rejected claims 1-4, 6-8, 12, 14-21, 23-25, and 27-29 under 35 USC 102(e) as being anticipated by Houldsworth (USPN 6,557,091). For a reference to anticipate a claim, each element and limitation of the claim must be found in the reference. Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302 (Fed. Cir. 1995). Houldsworth does not disclose every element of claim 1. The Office Action contends that Houldsworth discloses "allocating space in memory for an activation count for each frame." In doing so apparently the Office Action regards the HT/COUNT as the activation count. However, a close examination of the Houldsworth patent reveals that the HT/COUNT is not the same as the activation count. The term "activation count" is a known term and an *activation count* represents the number of times an application program has been activated. See US Patent 7,050,190 to

Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

Yamazaki. By contrast, the HT/COUNT is a handle table that holds pointers that identify data object locations within the heap. Houldsworth, col. 34, lines 38-40. Moreover, the Office Action apparently contends that the activation count reads on the handle table but it also contends that the claim step of “associating a the phase with an the activation whose activation count is non-zero” reads on “an SF [stack frame] is associated with a phase of count 2 which is non zero.” Office Action at page 6. Figure 5 does not show a phase. The count 2 corresponds to the number of references made to object 44 [see Houldsworth, col. 6, lines 9-10] which is not a phase. Therefore, Houldsworth does not disclose any of the steps of claim 1. Claims 2-15 are dependent on claim 1 and are not anticipated by Houldsworth for the foregoing reasons.

Claim 16 is a machine counterpart to claim 1 and it and its dependent claims are not anticipated by Houldsworth for the foregoing reasons. Claim 23 is a manufacture counterpart to claim 1 and it and its dependent claims are not anticipated by Houldsworth for the foregoing reasons.

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims.

Respectfully submitted,

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Serial Number 10/666,102
Docket Number YOR920030026
Amendment2

Date: January 11, 2007

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Certificate of Facsimile Transmission

I hereby certify that this Amendment and Response to Office Action, and any documents referred to as attached therein are being facsimile transmitted on this date, **January 11, 2007**, to fax number 571 273-8300.

Michael J. Buchenhorner

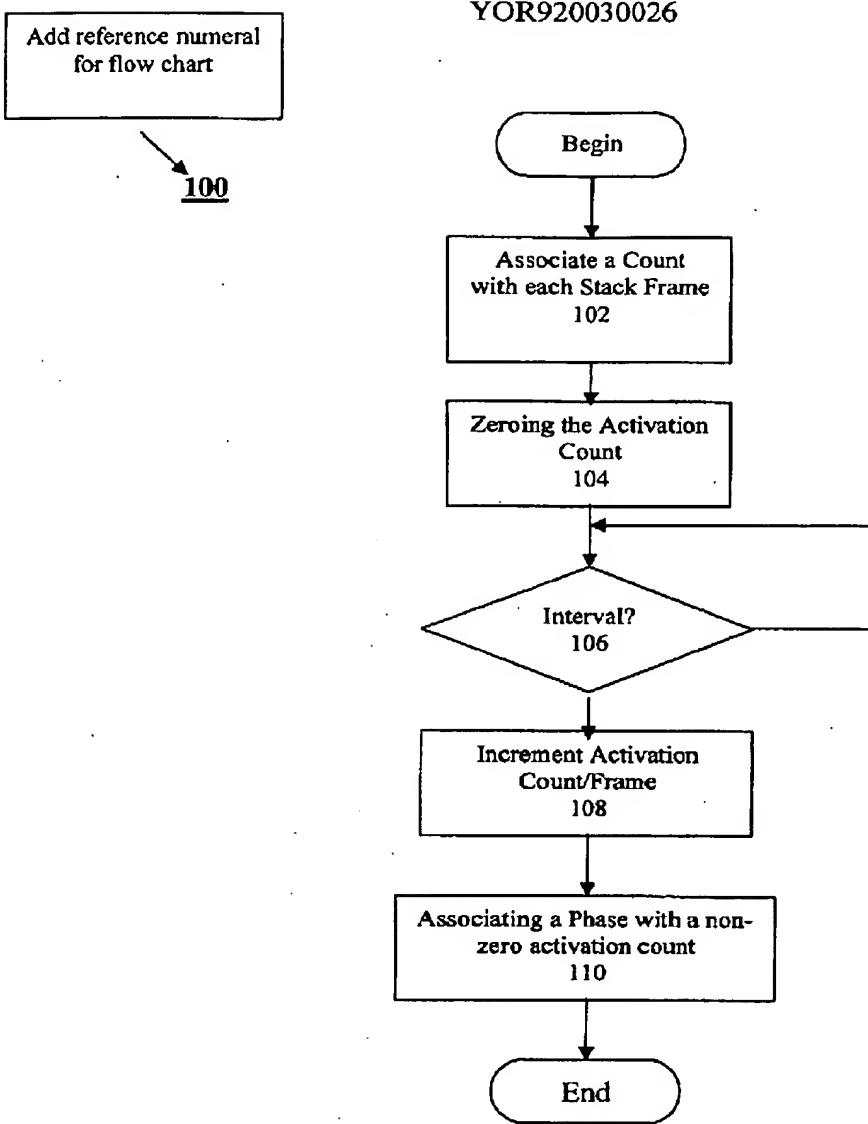
Michael J. Buchenhorner

Date: January 11, 2007

Attachments

Annotated Sheet Showing Changes

YOR920030026

**FIG. 1**

Annotated Sheet Showing Changes

YOR920030026

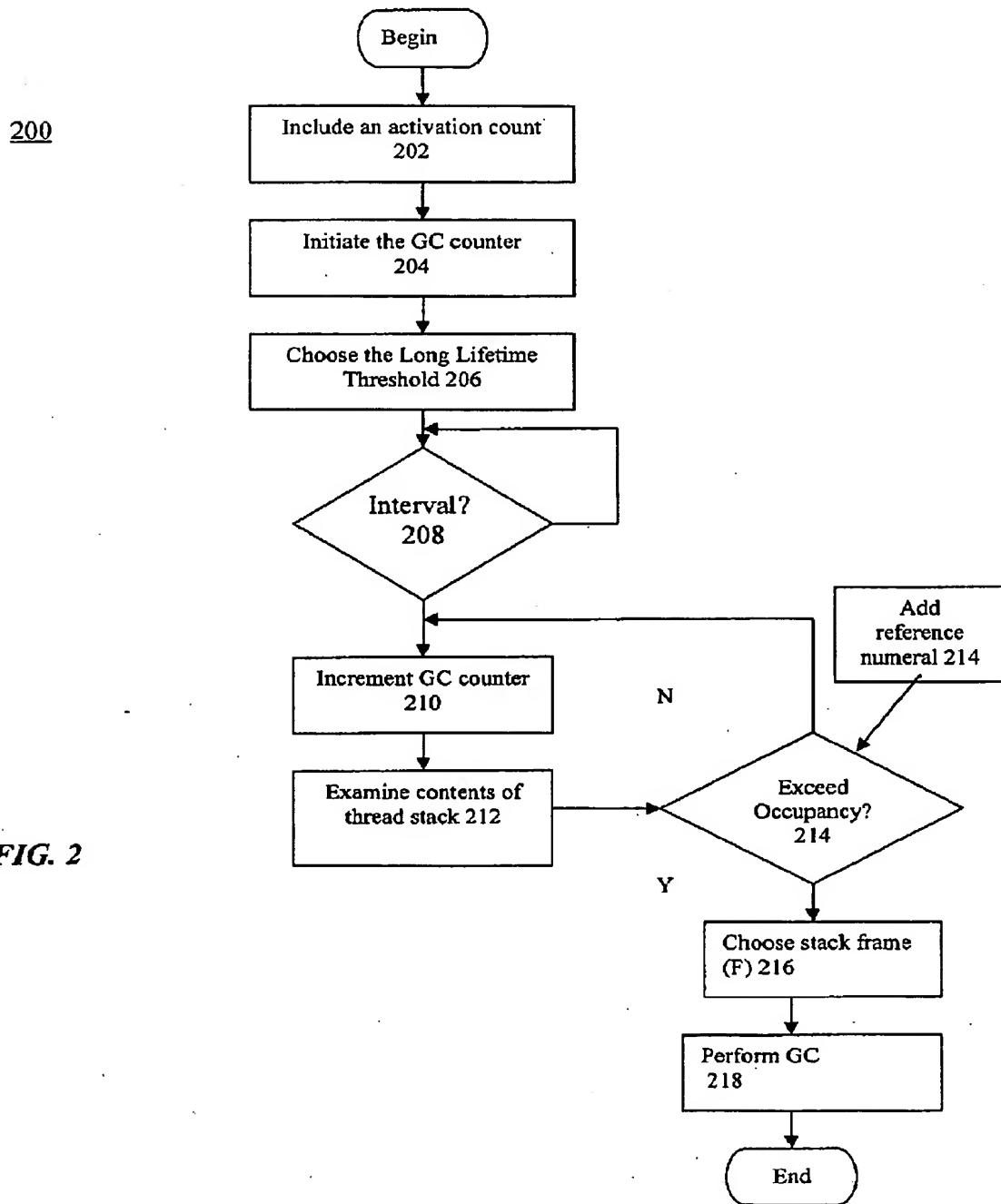


FIG. 2